

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - I**

**CP (IB) 80/MB/2020**

Under section 9 of the Insolvency and Bankruptcy  
Code, 2016

**EVERGREEN CORPORATION**

Address for Correspondence:

M24, Fida Mansion, 3<sup>rd</sup> Floor, Bibijan Street,  
Nagdevi, Mumbai – 400003.

...Operational Creditor/Petitioner

Versus

**SATEC ENVIR ENGINEERING (INDIA)  
PRIVATE LIMITED**

**[CIN: U29197MH1991PTC064661]**

Reg. Office- Plot No A/107-108, TTC Industrial Area,  
MIDC, Khairane, Thane-Belapur Road,  
Navi Mumbai – 400705

Corporate Office:

102, 1<sup>st</sup> floor, C Wing, Waterford Building, C.D.  
Barfiwala Marg, Juhu lane, Andheri (W),  
Mumbai – 400058.

... Corporate Debtor/Respondent

**Order Delivered on: 23.12.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Ms. Swati Chandan, Advocate.

For the Corporate Debtor : Ms. Mily Ghoshal, Advocate.

**ORDER**

***Per: Shyam Babu Gautam, Member (Technical)***

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Evergreen Corporation, through its Proprietor Mr. Lalit Prabhul Shah (“the Operational Creditor”)**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Satec Envir Engineering (India) Private Limited (“the Corporate Debtor”)**.
2. The Corporate Debtor was incorporated 30.12.1991 under the Companies Act, 1956. It has its registered Office situated 102, 1<sup>st</sup> floor, C Wing, Waterford Building, C.D. Barfiwala Marg, Juhu lane, Andheri (W), Mumbai – 400058. Therefore, this Bench has jurisdiction to deal with this petition.

**Brief Facts of the case:**

3. The present petition was filed on 17.12.2019 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of INR 25,88,608/- (INR Twenty-Five lakhs Eighty-Eight thousand and Four hundred Nine-two and paise Eighteen only) being INR 16,97,448/- (Rupees Sixteen lakhs Ninety-seven thousand Four hundred Forty-eight only) as the Principal Amount and interest @ 21% p.a amounting to Rs.8,91,160/- (Rupees Eight lakhs Ninety-one thousand One hundred and sixty only) as per agreed terms. Every invoice categorically mentions that payment was to be immediate, failing which interest @21% p.a. would be levied. The date of default is 12.05.2017.
4. The Operational Creditor is a stockist of Engineering tools, Measuring Ins, Hardware and General Merchants, based in Mumbai.

**Submissions made by Operational Creditor:**

5. The Operational Creditor sold Engineering tools, Hardware and ancillary products to the Corporate Debtor. The account of the Operational Creditor maintained with the Corporate Debtor was a continuous and running account. The invoices were raised for the same from time to time since the inception of business by the Operational Creditor upon the Corporate Debtor. Copies of outstanding statement of Corporate Debtor maintained by the Operational Creditor and copies of the Invoices against which the amount is due as per the Outstanding statement of the financial years 2016-17, 2017-18 and 2018-19 are annexed as Exhibit – B & B-1 (Colly) (Pgs 13-19 & 20-224) and copy of Ledger Account for the abovesaid Financial Years is annexed as Exhibit – D (Pgs 227-231) to the Company Petition. However, payments made by the Corporate Debtor were not regular, despite continuous reminders. But due to the professional relationship and assurances made by the Corporate Debtor the Operational Creditor sold and delivered the goods to the Corporate Debtor. The last payment of Rs.2,00,000/- was made by the Corporate Debtor on 12.05.2017 and balance of Rs.17,60,132/- remains due and payable along with interest. The Corporate Debtor's own ledger account confirms the balance amount. Copy of Ledger Account of the Corporate Debtor is annexed to the Company Petition as Exhibit – G (pg. 260-261).
6. On 14.02.2019 a cheque bearing 823750 was issued for a meagre sum of Rs.2,99,520/- (Rupees Two lakhs Ninety-nine thousand and Five hundred twenty-two only) towards part-payment. On presentation, the same was returned with an endorsement letter "Funds insufficient". Copy of the dishonoured cheque is annexed to the Company Petition as Exhibit – C (pg. 225-226).

7. Due to the defaults of the Corporate Debtor, the Operational Creditor was constrained to issue Demand Notice dated 08.08.2019 under Section 8 of the Code to the Corporate Debtor calling for the unpaid operational debt. Copy of Demand Notice is annexed to the Petition as Exhibit – E (pg. 232-240). The Corporate Debtor on 21.08.2019 replied to the Demand Notice dated 08.08.2019 sent by the Operational Creditor. The Corporate Debtor in its reply to the Demand notice annexed certain emails/correspondences to show purported existence of dispute as regards the quality of materials supplied by the Operational Creditor to raise spurious defence. Copies of the emails and correspondence is annexed to the Petition as Exhibit – F (Pgs 244 to 257). The Corporate Debtor has in its Affidavit in reply to the Petition filed on 20.12.2021 also once again annexed the said emails/correspondences to show purported existence of dispute (Pages 11 to 34 of the Reply).

**Submissions made by the Corporate Debtor:**

8. The Corporate Debtor has filed reply dated 21.08.2019 to the Demand Notice received from the Operational Creditor and also filed Affidavit-in-reply dated 20.12.2021 with a view to oppose the relief sought in the Company Petition. It is submitted that the Petition is not maintainable as the Operational Creditor did not disclose important and material facts and documents. The averments made in the Petition are false, hence the Petition under reply is liable to be dismissed with cost.
9. The Corporate Debtor submits that the Operational Creditor supplied various engineering tools, hardware and engineering products and accordingly believing the Operational Creditor, the Corporate Debtor issued various orders to the Operational Creditor of the said equipment

and accordingly various invoices were raised by the Operational Creditor on the Corporate Debtor. However, the product supplied by the Operational Creditor were faulty, defective and obsolete. The same was brought to the notice of the Operational Creditor on various occasions. However, the Operational Creditor denied to replace the said defective products. Due to failure of the Operational Creditor, the pace of the work of the Corporate Debtor suffered badly and the goodwill of the Corporate Debtor was constantly and heavily affected.

10. The Corporate Debtor further submits that the Operational Creditor has filed a false claim of Rs.25,88,608/- out of which a sum of Rs.16,97,448/- is alleged to be the principal amount and the balance of Rs.8,91,160/- is alleged to be interest calculated at the rate of 21% per annum which the Operational Creditor is neither eligible nor liable to be received. The Counsel further submits that the Corporate Debtor through various communication including emails have very clearly and categorically stated that the material supplied by the Operational Creditor were of inferior quality hence rejected by the Corporate Debtor and instructed the Operational Creditor to lift the rejected materials from the site. But the Operational Creditor resultantly, raised the debit notes.
11. The Corporate Debtor vide email dated 19.04.2018 addressed to the Operational Creditor, bringing to their notice that the pug machine which were supplied on urgent basis, had no marking of make and model. The Operational Creditor was supplying tools and products having no brand and make. A copy of the email dated 19.04.2018 is annexed hereto the Affidavit-in-reply as Exhibit – A (pages 11-12). The Corporate Debtor vide its letter dated 26.04.2018 addressed to the Operational Creditor under the subject line “Rejection note” referring to invoice/challan

Number 311113 dated 09.04.2018 and MRN No.16 dated 12.04.2018 had brought to the notice of the Operational Creditor that the Corporate Debtor had received the material which was supplied against same Purchaser Order Number 01C vide invoice/challan No.31113 and the same was rejected. Hence requested the Operational Creditor to arrange to lift the material within a day and further issue credit note against the rejected material immediately. However, the Operational Creditor failed to lift the said rejected materials. Copy of the said letter is annexed to the Affidavit-in-reply as Exhibit – B (pages 13-14).

12. On 30.04.2018 the Asst. Manager Stores of the Corporate Debtor wrote an e-mail to the officials and Accounts Department of the Company in which the details of rejected materials received from the Operational Creditor were mentioned. Copy of the said letter is annexed to the Affidavit-in-reply as Exhibit – C (pages 15-17)
13. Furthermore, vide email dated 10.05.2018 further debit notes for supply of sub-standard and low-grade quality products was raised against the Operational Creditor. Copy of the said email dated 10.05.2018 is annexed hereto to the Affidavit-in- reply as Exhibit – D (Pages 18-23).
14. Thereafter vide another email dated 21.06.2018, the Corporate Debtor raised a debit note for 50 kg. saw wire of 3.15 mm since the material was rejected and could not be used for further production. The said email further confirmed that the representative of the Operational Creditor was in the plans of the Corporate Debtor to lift the said rejected goods. Copy of the said email dated 21.06.2018 is annexed hereto to the Affidavit-in-reply as Exhibit – E (pages 24-29).

15. The Corporate Debtor states that on several similar occasions the Operational Creditor failed to respond to the Corporate Debtor in spite of various requests being made for replacement of the rejected goods and to provide good quality products which shall ensure good production by the Corporate Debtor. The Corporate Debtor further states that through various communications on whats app had intimated to the Corporate Debtor that the Operational Creditor shall release the payment which is sufficient enough to portray the fact that Operational Creditor was aware of the fact that is the Operational Creditor who failed to supply such goods to the Corporate Debtor. The Corporate Debtor craves leave to refer to the said whats app communications as and when required.
16. The Corporate Debtor submits that inspite of the fact of the existence of the above-mentioned disputes the Operational Creditor had issued a demand notice dated 08.08.2019 allegedly claiming the above mentioned amount of Rs.24,99,492/- out of which a sum of Rs.16,97,448/- is alleged to be the principal amount and the balance amount of Rs.8,02,044/- is alleged to be the interest calculate at the rate of 21 per cent per annum. Whereas the Operational Creditor is neither eligible to claim any principal nor any interest as alleged by the Operational Creditor.
17. Due to the abovementioned demand notice, the Corporate Debtor vide its reply dated 21.08.2019 had brought to the notice of the Operational Creditor *inter alia* the pre-existing dispute in the said matter and had accordingly stated that due to the existence of the pre-existing dispute as per the provision of Section 5(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 the Operational Creditor is neither eligible to claim any principal amount nor any interest amount as alleged by the Operational Creditor. Copy of the said letter dated

21.08.2019 is annexed to the Company Petition as Exhibit – F (pages 241-257). Thus, the Corporate Debtor denies all the allegations/statement and/or averments made in the Company Petition under reply so far as they are contrary to and/or inconsistent with what is stated herein above.

**Rebuttal by the Operational Creditor:**

18. It is stated that the purported existence of disputes as claimed by the Corporate Debtor were already been settled before the issuance of demand notice and now the Corporate Debtor is reagitating the settled issues. The Operational Creditor was constrained to file an Affidavit in Rejoinder dated 17.12.2021 (**Rejoinder**) to bring on record true and correct facts and additional documents to show that the purported existence of disputes were already settled.
19. It is further stated that the amounts as regards these disputed goods do not form part of the claim as credit notes have already been issued in respect of these goods in 2018 itself. Credits have been given in the ledger of the Operational Creditor. The entries of the Corporate Debtor's own ledger (at page 260 of the Petition) makes it evident that the Corporate Debtor has already debited the amounts in respect of these disputed goods. After such debits, an amount of Rs.17,60,132/- more than the unpaid operational debt claimed in this Petition, still shows as outstanding due and payable to the Operational Creditor in the books of the Corporate Debtor. The Operational Creditor has annexed each such credit notes and debit notes as Annexure – A to the Written Submissions and clarified that the purported pre-existing disputes have already been settled long before the issuance of Demand Notice.

20. The Operational Creditor further stated that it is a settled law that the Corporate Debtor shall bring to the notice of the Operational Creditor the pre-existence of dispute in relation to such unpaid operation debt in its defence under Section 9 of the Code and most important is that the dispute must exist before the receipt of the demand notice. The pre-existence of dispute as claimed by the Corporate Debtor were already settled in the books of the Corporate Debtor as well in Operational Creditor. The Operational Creditor has relied on the judgement of Mobilox Innovation (P) Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353.

***Findings:***

21. We have heard the submissions of the Counsel appearing for the Operational Creditor and perused the records.
22. It is observed that the Notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 dated 08.08.2019 issued to the Corporate Debtor and was served on 13.08.2019. It is also noted that the Corporate Debtor replied to the said Demand Notice on 21.08.2019, however in the reply to Demand Notice the Corporate Debtor raised defence that there is dispute regarding the claim. It is observed that defence raised by the Corporate Debtor is illusory disputes which were raised first time with an intention to fraudulently evade the liability, on the contrary the Operational Creditor brought to our attention that amounts for which the Corporate Debtor states that there is dispute, infact the Corporate Debtor already received Credit Note for the same therefore the amount claimed by way of this present Petition is over and above the disputed amount.
23. As relied by the Operational Creditor on the judgement of Mobilox Innovation (P) Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353 the

law is settled on point of dispute that the Corporate Debtor shall bring to the notice of the Operational Creditor the pre-existence of dispute. In the matter in hand the Pre-existing dispute brought by the Corporate Debtor was already settled by way of issuing Credit Note for that amount and the said facts are brought on record by way of rejoinder. Hence it is concluded that the amount is due and payable by the Corporate Debtor.

24. The amount outstanding is above Rs. 1 lakh and since the present petition was filed before the amendment increasing threshold limit, the present petition is in compliance with section 4(1).
25. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
26. The petition bearing **CP (IB) 80/MB/C-I/2020** filed by **Evergreen Corporation**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **SATEC Envir Engineering (India) Private Limited [CIN: 29197MH1991PTC064661]**, the Corporate Debtor, is **admitted**.
27. There shall be a moratorium under Section 14 of the IBC, in regard to the following:

- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

28. Notwithstanding the above, during the period of moratorium: -

- e. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- f. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
29. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
30. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
31. The Tribunal hereby appoints **Ms. Rashmi Pushpak Gangwal**, Registration No. IBBI/IPA-002/IP-N01058/2020-2021/134011, Email: [iprashmigangwal@gamil.com](mailto:iprashmigangwal@gamil.com) Contact No:9422214071 as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
32. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their

knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

33. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
34. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
35. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
36. Ordered accordingly.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**  
23.12.2022  
SAM/Jenny

**Sd/-**  
**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**